IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 461 of 2003

Hussainsaheb Mohamed Saheb Sundake .. Petitioner

versus

Smt.Aminabi Alisaheb Gadwal .. Respondents

...

Mr.D.M. Gupte for the petitioner.

None for the respondents

CORAM : B.H. MARLLAPALLE,J

DATED : 16th August 2005.

P.C.:

1. Heard Mr.Gupte learned counsel for the petitioner.

2. An application was submitted at Exhibit 19 for deciding the preliminary issue regarding limitation and the same came to be rejected by the learned Judge of the trial Court on 19th January 2002.

3. As per the trial court, the issue of limitation can be decided along with other issues if required to be framed at the time of deciding the suit finally. The said order is challenged in this Revision Application. The trial court noted that the issue of limitation raised was a mixed question of fact and law and therefore, for deciding the same, it was necessary to have the evidence recorded. Hence, it held that the issue of limitation would be decided along with other issues while adjudicating the suit. The reasoning given by the trial court does not call for any interference and it is clarified that the issue of limitation as raised by the present petitioner shall be framed and decided along with other issues while the suit is being decided finally.

4. Subject to the above clarifications, Civil Revision Application stands rejected.

B.H. MARLAPALLE,J